

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0970/lins3
JTK.....

INS 2A:

The bill provides that if a candidate makes disbursements that exceed the total amount of the public financing benefit allocated to the candidate and the total qualifying and seed money contributions lawfully accepted by the candidate, the candidate is subject to a forfeiture (civil penalty) of not more than 10 times the amount by which his or her disbursements exceed the allocation. In addition, the bill provides that a candidate who accepts contributions in excess of any limitation imposed under the bill is subject to a forfeiture of not more than 10 times the amount by which the contributions exceed the applicable limitation. The bill also provides that if any candidate or agent of a candidate knowingly accepts more contributions than the candidate is entitled to receive, or makes disbursements exceeding the total amount of the public financing benefit received by the candidate and the qualifying and seed money contributions lawfully received by the candidate, the candidate or agent may be fined not more than \$25,000 or imprisoned for not more than 10 years, or both. Under the bill, any person who, in connection with the receipt or disbursement of a public financing benefit, knowingly provides false information to the Government Accountability Board, or knowingly conceals or withholds information from the board, is subject to the same penalty.

INS 23-8:

SECTION 1. 11.60 (4) of the statutes, as affected by 2007 Wisconsin Act 1, is amended to read:

11.60 (4) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (h), 5.08, and 5.081, actions under this section or 11.517 may be brought by the board or by the district attorney for the county where the defendant resides or, if the defendant is a nonresident, by the district attorney for the county where the violation is alleged to have occurred. For purposes of this subsection, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

NOTE: NOTE: Sub. (4) is shown as amended by 2007 Wis. Act 1 eff. the initiation date as set forth in section 209 (1) of that Act. Prior to that date it reads: NOTE:

(4) Actions under this section arising out of an election for state office or a statewide referendum may be brought by the board or by the district attorney of the county where the violation is alleged to have occurred, except as specified in s. 11.38. Actions under this section arising out of an election for local office or a local referendum may be brought by the district attorney of the county where the violation is alleged to have occurred. Actions under this section arising out of an election

for county office or a county referendum may be brought by the county board of election commissioners of the county wherein the violation is alleged to have occurred. If a violation concerns a district attorney or circuit judge or candidate for such offices, the action shall be brought by the attorney general. If a violation concerns the attorney general or a candidate for such office, the governor may appoint special counsel under s. 14.11 (2) to bring suit in behalf of the state. The counsel shall be independent of the attorney general and need not be a state employee at the time of appointment.

History: 1973 c. 334; 1977 c. 449; 1979 c. 328; 1985 a. 303; 1997 a. 27, 230; 1999 a. 182; 2001 a. 109; 2003 a. 321; 2005 a. 177; 2007 a. 1.

SECTION 2. 11.61 (2) of the statutes, as affected by 2007 Wisconsin Act 1, is amended to read:

11.61 (2) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (i), 5.08, and 5.081, all prosecutions under this section or s. 11.518 shall be conducted by the district attorney for the county where the defendant resides or, if the defendant is a nonresident, by the district attorney for the county where the violation is alleged to have occurred. For purposes of this subsection, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

NOTE: NOTE: Sub. (2) is shown as amended by 2007 Wis. Act 1 eff. the initiation date as set forth in section 209 (1) of that Act. Prior to that date it reads:NOTE:

(2) Except as provided in s. 11.38 (5), all prosecutions under this section shall be conducted by the district attorney of the county where the violation is alleged to have occurred. If the district attorney refuses to act upon a sworn complaint, or fails to act upon such a complaint within 60 days of the date on which the complaint is received, the attorney general may then conduct the prosecution under this section. If a violation concerns a district attorney or circuit judge or candidate for such offices, the prosecution shall be conducted by the attorney general. If a violation concerns the attorney general or a candidate for such office, the governor may appoint a special prosecutor under s. 14.11 (2) to conduct the prosecution in behalf of the state. The prosecutor shall be independent of the attorney general and need not be a state employee at the time of appointment.

History: 1973 c. 334; 1975 c. 93 ss. 117, 119 (1); 1977 c. 449; 1979 c. 328; 1983 a. 484; 1985 a. 303; 1997 a. 283; 2001 a. 109; 2005 a. 177; 2007 a. 1.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4240/1dn

JTK:kjf:ch

January 17, 2006

Senator Robson:

1. Because it would be disruptive and confusing to implement this draft in the midst of an election campaign, the draft provides for an effective date of December 1 following the date of publication. Please let me know if you want to treat this issue differently.
Amy Kasper.

2007-08 and 2008-09

2. 1. This draft includes two appropriations for which I have specified "\$-0-" for expenditure in fiscal years ~~2005-06~~ and ~~2006-07~~. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.

3. 2. In *McIntyre v. Ohio Elections Commission*, 115 S. Ct. 1151 (1995), the U.S. Supreme Court found unconstitutional, under the First Amendment, a statute that prohibited publication or distribution of any material designed to promote the nomination or election of a candidate or the adoption or defeat of any issue or to influence the voters at any election without identification of the name and address of the person who publishes or distributes the material. The court, however, indicated that a state's interest in preventing fraud might justify a more limited disclosure requirement (115 S. Ct. at 1522). Further, the court indicated that it still approved of requirements to disclose independent expenditures, which it upheld in *Buckley v. Valeo*, et. al., 96 S. Ct. 612, 661-662 (1976), (*McIntyre*, 115 S. Ct. at 1523). In view of this opinion, the constitutionality of disclosure statutes such as proposed s. 11.522, relating to labeling of certain political communications by candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit is not clear at this point. We will have to await further decisions from the court before we know the exact limits of a state's ability to regulate in this field.

4. 3. ~~Some courts have held that~~ *The lower federal courts have disagreed as to whether* statutes such as proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate for the office of justice of the supreme court when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34 F. 3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513 (2) was voided. ~~It should be noted that there are viable arguments to be made on both sides of this issue, this case is not binding in Wisconsin because it did not arise in the circuit that includes Wisconsin and the U.S. Supreme Court has not yet spoken on this issue.~~

5. 4. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of justice of the supreme court who fail to qualify for a public

See also (i) *Daggett v. Comm. on Governmental Ethics and Election Practices*, 205 F.3d 445, 463-65, 467-69 (1st Cir., 2000), in which a similar law in Maine was not found to abridge the First Amendment.

financing benefit, may raise an equal protection issue under the 14th Amendment to the U.S. Constitution. One lower federal court has held that such a provision does not contravene equal protection requirements. See *ASSN. of American Physicians and Surgeons v. Brewer*, 363 F. Supp. 2d 1197 (D.C., Ariz., 2005). Once again, the U.S. Supreme Court has not ruled on this issue.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2146/1dn
JTK:kjf:pg

March 15, 2007

Senator Robson:

1. Because it would be disruptive and confusing to implement this draft in the midst of an election campaign, the draft provides for an effective date of December 1 following the date of publication. Please let me know if you want to treat this issue differently.
2. This draft includes two appropriations for which I have specified "\$-0-" for expenditure in fiscal years 2007-08 and 2008-09. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.
3. In *McIntyre v. Ohio Elections Commission*, 115 S. Ct. 1151 (1995), the U.S. Supreme Court found unconstitutional, under the First Amendment, a statute that prohibited publication or distribution of any material designed to promote the nomination or election of a candidate or the adoption or defeat of any issue or to influence the voters at any election without identification of the name and address of the person who publishes or distributes the material. The court, however, indicated that a state's interest in preventing fraud might justify a more limited disclosure requirement (115 S. Ct. at 1522). Further, the court indicated that it still approved of requirements to disclose independent expenditures, which it upheld in *Buckley v. Valeo*, et. al., 96 S. Ct. 612, 661-662 (1976), (*McIntyre*, 115 S. Ct. at 1523). In view of this opinion, the constitutionality of disclosure statutes such as proposed s. 11.522, relating to labeling of certain political communications by candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit is not clear at this point. We will have to await further decisions from the court before we know the exact limits of a state's ability to regulate in this field.
4. The lower federal courts have disagreed as to whether statutes such as proposed ss. 11.512 (2) and 11.513 (2), which increase the public financing benefit available to a candidate for the office of justice of the supreme court when independent disbursements are made against the candidate or for his or her opponents, or when the candidate's opponents make disbursements exceeding a specified level, may result in an abridgement of the First Amendment rights of the persons making the disbursements. See *Day v. Holahan*, 34 F. 3d 1356 (8th Cir., 1994), in which a Minnesota law that included provisions similar to proposed ss. 11.512 (2) and 11.513 (2) was voided. See also *Daggett v. Comm. on Governmental Ethics and Election*

Practices, 205 F. 3d 445, 463-65, 467-69 (1st Cir., 2000), in which a similar law in Maine was not found to abridge the First Amendment. The U.S. Supreme Court has not yet spoken on this issue.

5. Proposed s. 11.512 (1), which imposes additional reporting requirements upon candidates for the office of justice of the supreme court who fail to qualify for a public financing benefit, may raise an equal protection issue under the 14th Amendment to the U.S. Constitution. One lower federal court has held that such a provision does not contravene equal protection requirements. See *Assn. of American Physicians and Surgeons v. Brewer*, 363 F. supp. 2d 1197 (D.C., Ariz., 2005). Once again, the U.S. Supreme Court has not ruled on this issue.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Memo

To: Senator Kreitlow

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2007 session draft.

LRB Number: 2007 LRB-2146

Version: “/1”

Fiscal Estimate Prepared By: (agency abbr.) ELB

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 04 / 11 / 2007

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To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Unintroduced Draft*

> **If redrafted ...** please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.

> **If introduced ...** and the version of the attached fiscal estimate is for a **previous version ...** please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Christina) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

> **If introduced ...** and the version of the attached fiscal estimate is for the **current version ...** please write the draft's introduction number below and give to Mike (or Christina) to process.

THIS DRAFT WAS INTRODUCED AS: 2007 _____

Barman, Mike

From: Barman, Mike
Sent: Wednesday, April 11, 2007 8:34 AM
To: Sen.Kreitlow
Cc: Pagel, Matt
Subject: LRB 07-2146/1 (un-introduced) (FE by ELB - attached - for your review)
Attachments: FE_Kreitlow.PDF *



FE_Kreitlow.PDF
(457 KB)

Mike Barman (Senior Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

Fiscal Estimate - 2007 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number 07-2146/1		Introduction Number	
Description Public financing of campaigns for the office of justice of the supreme court, making appropriations, and providing penalties			
Fiscal Effect			
State:			
<input type="checkbox"/> No State Fiscal Effect			
<input checked="" type="checkbox"/> Indeterminate			
<input checked="" type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Increase Existing Revenues	
<input type="checkbox"/> Decrease Existing Appropriations		<input type="checkbox"/> Decrease Existing Revenues	
<input checked="" type="checkbox"/> Create New Appropriations		<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget	
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<input type="checkbox"/> Decrease Costs	
Local:			
<input type="checkbox"/> No Local Government Costs			
<input type="checkbox"/> Indeterminate			
1. <input type="checkbox"/> Increase Costs		3. <input type="checkbox"/> Increase Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs		4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
5. Types of Local Government Units Affected			
<input type="checkbox"/> Towns		<input type="checkbox"/> Village <input type="checkbox"/> Cities	
<input type="checkbox"/> Counties		<input type="checkbox"/> Others 0	
<input type="checkbox"/> School Districts		<input type="checkbox"/> WTCS Districts	
Fund Sources Affected			
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.511			
Affected Ch. 20 Appropriations			
Agency/Prepared By		Authorized Signature	
ELB/ Kevin Kennedy (608) 266-8005		Kevin Kennedy (608) 266-8005	
		Date	
		4/10/2007	

Fiscal Estimate Narratives

ELB 4/11/2007

LRB Number 07-2146/1	Introduction Number	Estimate Type	Original
Description Public financing of campaigns for the office of justice of the supreme court, making appropriations, and providing penalties			

Assumptions Used in Arriving at Fiscal Estimate

This legislation establishes a means of providing public funds for candidates for Supreme Court Justice in primary and election campaigns through the Democracy Trust Fund, a segregated fund established by the legislation. The legislation establishes detailed criteria for qualifying for and complying publicly funded grants from the Democracy Trust Fund. It also establishes a series of matching grants if a qualified candidate accepting a grant is opposed by a non-qualifying candidate or the qualifying candidate is targeted by a significant amount of independent expenditures.

These detailed criteria will require the dedication of the equivalent of a full time resource to monitor compliance and ensure that all disbursements are timely distributed. The individual assigned to this project will have to audit reports, including special reports mandated by the legislation and direct the State Treasurer to make the proper disbursements in a timely manner. The work would be full time from January of an election for Supreme Court Justice through the following August. In addition, significant time would be dedicated to monitoring reports and determining eligibility from July preceding an election for Supreme Court Justice through December before the election.

Currently the agency has three full-time staff dedicated to auditing all campaign finance reports to ensure compliance with existing regulations. This function has been understaffed for more than a decade as campaign receipts and expenditures have skyrocketed. The addition of a full-time campaign auditor will ensure that the requirements of the legislation are met and enable the agency address a backlog of audits.

An additional campaign auditor will cost approximately \$35,000 in salary, \$14,000 in fringe and \$4,000 in support costs annually. In addition there would be one-time set up costs of \$5,000 for the position. Other one-time costs include \$5,000 for developing and printing forms, manuals and other informational materials which are not currently in the agency budget.

The Democracy Trust Fund would require an infusion of as much as \$2,800,000 in a contested election for Supreme Court Justice. Each qualifying candidate would be eligible for up to \$100,000 in campaign grants for the primary and \$300,000 in campaign grants for the election. If there are three qualifying candidates in the primary and two in the election the total amount of funding required would not exceed \$900,000.

However, if a qualifying candidate is opposed by non-qualifying candidates who exceed the spending limit by more than the amount of the grant, the qualifying candidate could receive an additional \$300,000 in the primary and \$900,000 in the election. If the qualifying candidate is targeted by independent expenditures that exceed the spending limit, the qualifying candidate could receive as much as an additional \$300,000 in the primary and \$900,000 in the election.

Long-Range Fiscal Implications

Historically only a small number of elections for Supreme Court Justice are contested in a 10 year period. This would limit the amount of funds required for the Democracy Trust Fund over a ten-year cycle. The incentives in the legislation could keep the spending to the scenario where all candidates qualify for public funds. This would increase the administrative impact on the agency staff to track qualification for and adherence with the detailed fundraising and reporting requirements, but would reduce the potential outlay from the Democracy Trust Fund.